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HEARINGS
BEFORE THE
COMMITTEE ON THE PUBLIC LANDS

HOUSE OF REPRESENTATIVES

ON

H. R. 20493

A BILL FOR THE PROTECTION OF WATER SUPPLY
FOR MANITOU AND COLORADO SPRINGS

MARCH 14 AND 15, 1912



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PROTECTION OF WATER SUPPLY FOR MANITOU AND COLORADO SPRINGS.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 14, 1912.

The committee met at 10 a. m., Hon. Edward T. Taylor (acting chairman) presiding.

The CHAIRMAN. I have taken the liberty of asking the committee to grant a hearing to the city of Colorado Springs upon H. R. 20493. That is the bill, gentlemen, that was introduced by myself, authorizing the city of Colorado Springs and the town of Manitou to buy something like 14,000 acres of land on the north side of Pike's Peak for the protection of their water supply. I introduced a bill along this line over two years ago, but at that time there was some objection to the measure, and since that time we have endeavored in every way possible to eliminate the objections that were made to the bill then, and now the measure comes up again for consideration. The duplicate of this bill is now in the Senate and has been referred by them to the Interior and Agricultural Departments. I have not referred this to the departments yet, but I expect to do so, unless the bill first comes over from the Senate, together with the reports from over there. But these gentlemen, Mr. Avery, the mayor of Colorado Springs; and also the city attorney and two other prominent citizens of that city are here, and they want to make statements to the committee as to the necessities, from their point of view, for this legislation, and I will ask the committee, if you will, to listen first to Mr. C. L. McKesson, the attorney for the city of Colorado Springs, who will present this matter to you. I may say, before Mr. McKesson starts, that we have on the table in front of us a relief cast here of Pike's Peak and the surrounding country. It is drawn to scale and is accurate, and they have had it prepared and brought here at a great deal of expense. The city authorities had it made for the purpose of showing to this committee clearly and definitely what they want and why these cities must have this relief, and also to explain more in detail the matters contained in this bill introduced by myself. Mr. McKesson, you may now proceed.

STATEMENT OF MR. C. L. MCKESSON, CITY ATTORNEY OF COLORADO SPRINGS, COLO.

Mr. McKESSON. Mr. Chairman and gentlemen of the committee, we are here in behalf of House bill No. 24903, introduced by Mr. Taylor, of this committee, which is a bill asking for a grant of lands to the city of Colorado Springs and the town of Manitou, in El Paso County, State of Colorado. We believe, gentlemen, that when you

understand the conditions which surround our cities in our part of the country you will see that we are making a reasonable request in asking for the grant of the land described in this bill. The city of Colorado Springs is asking for about 10,000 acres of land, and the town of Manitou is asking for about 4,000 acres of land. We are asking for these lands for the purpose of protecting our water supply. The town of Manitou and the city of Colorado Springs are peculiarly situated; they are practically at the base of Pikes Peak, a mountain that is known throughout the entire world. They are the centers of large tourist travel. There annually visit these cities and this region from seventy-five to one hundred thousand persons, and this number is increasing very rapidly from year to year.

We also have a resident population that is supplied with the water which arises on these watersheds of Pikes Peak of about 35,000 to 37,000 people, so that, gentlemen, we have to supply annually from 135,000 to 140,000 people with water. I call your attention, gentlemen, to this fact: That we are a center of attraction, a tourist center, a center, I think, which is visited more than any national park in the Northwest, by people from all over the world, as well as from all parts of the United States. We feel that there is laid upon us a most serious and binding duty, not only to those who permanently reside in that district, but to those who are coming to us from all parts of the world, and that is, gentlemen, that we shall have pure water, and that these municipalities in the valley and at the foot of Pikes Peak shall not become centers from which disease shall be spread to every part of the country. Gentlemen, throughout the entire length and breadth of this land there is a feeling among thousands and tens of thousands of people that at some time during their lives they will visit Pikes Peak, just as there is a desire among those of us born on the Western Plains to see the Capital of our Nation.

Some of you gentlemen have been out there, and others of you will no doubt go at some time or other. When you visit that beautiful section of the country, which is one of the most interesting spots in the Nation, you will want to come away from there at least as healthy if not healthier than when you went. But you must have pure water, if you are to come away recuperated, invigorated, and strengthened, and unless you have pure water you can not enjoy yourselves while you are there. So, gentlemen, we feel that we have a proposition that will appeal to you differently from that which might or can arise in many other localities, because of the fact that we are practically a park which is visited annually by so many people from different parts of the world. We are asking for the things which are necessary to enable us to furnish pure water to those who are in that locality, not only for our home people, but for those who are coming to us from year to year, and it seems to me, gentlemen, if I can make it appear to you that we actually need the lands asked for in this bill, in order that we may have an adequate supply of pure water for our citizens and the visitors who come there, that I have presented a matter to you which will receive your favorable consideration. I believe that I can show you clearly that we need these lands for this purpose.

I first call your attention to the fact, gentlemen, that we are peculiarly situated in this regard: That we must draw our entire water supply from the watersheds of Pikes Peak. Perhaps no other

section in the world of equal size has such a watershed. This mountain that towers 14,000 feet above sea level and 6,000 feet above the adjoining towns, gathers the snows during the winter; these snows melt during the summer and the water flows down into the valleys and becomes the source of water supply for the villages and towns in the valley. Having this small area from which we must draw our water supply, we are confronted with this most unusual condition: The very mountain from which we must draw our water supply is the center of tourist travel. The mountain from which our water must come pure is overrun every summer by thousands and tens of thousands of people; they come on foot and with all sorts of conveyances; camping parties, fishing parties, and hunting parties are tramping over this watershed of ours all summer. This mountain is a center of attraction to which people from every part of the country come every season.

As soon as they reach the villages at the base of this mountain their first thought is to get out on this mountain, our watershed. It is estimated that from 25,000 to 30,000 people walk to the top of that peak each summer of every year, and a much larger number who never reach the top of that peak scatter over and through the mountains and valleys and along the streams on the sides of that peak. Gentlemen, we must draw our water supply from a small section of the country which, during the summer season, is overrun with people. The question with us is, how we can keep the streams that feed our water reservoirs from carrying contamination, thereby rendering the water impure for the cities and towns at the base of the peak. We are confronted with a problem that is very hard to solve; that is, how can we under the conditions described keep our water supply pure. Manitou's water supply is drawn from the eastern slope of Pikes Peak, indicated on this relief map by these blue areas here [indicating], and comes from an elevation of about 11,000 feet. This relief map shows in the center here [indicating] Pikes Peak, which reaches an elevation in excess of 14,000 feet. The brown area and reddish area show the lands above timber line. This land lays from 11,000 to 14,000 feet in elevation. It is too cold for timber to grow here. From the top of the peak here [indicating] down these several sides there is no timber whatever. The areas that are marked in drab show the mountains where the timber has been burned off in the past and has not become reforested. There is practically no timber on these burned areas.

Mr. RAKER. Where is Colorado Springs located on this map?

The CHAIRMAN. You can see from this map here.

Mr. McKESSON. Here it is, right here [indicating].

Mr. RAKER. Where is Manitou on this cast?

Mr. McKESSON. Manitou is right down in the corner and Colorado Springs is about 6 miles to the east of that. Colorado City lies between these two places. Colorado Springs supplies Colorado City with water. The land embraced in the bill covers two sections, as I will indicate to you in a moment. Our present water supply is drawn from the south and southeast slopes of Pikes Peak, as you see here. These blue spots represent different reservoirs, and from these [indicating] the water is carried down to here [indicating] and to Colorado Springs in a pipe line. Colorado Springs is about 18 miles from the top of the peak.

Mr. RAKER. Which is north on the map?

Mr. McKESSON. North is over there [indicating]. This relief map is not correctly drawn to indicate the points of the compass.

The city at the present time owns certain lands, and for the protection of its present water supply has fenced these lands.

Mr. RAKER. When did you get them?

Mr. McKESSON. They were granted by Congress in 1893, I believe. These lands lie within that area there [indicating].

Mr. VOLSTEAD. How much an area is that?

Mr. McKESSON. Seven thousand five hundred acres.

Mr. VOLSTEAD. Where is that located?

Mr. McKESSON. It is on the south and southeast sides of the peak. Now, the city, in order to protect its water system from pollution, has found certain things that were necessary for it to do. First, that the land should be fenced with high barbed-wire fences, so as to prevent cattle from straying in on the lands along the streams and to keep people and campers and teamsters from entering these lands without permission. People can enter these fenced areas if they have permission. If it was not for these fences, the people could enter from every side.

Mr. RUBEY. These present lands that are now owned by the city, are these fenced in?

Mr. McKESSON. Yes, sir.

Now, an analysis of that water in the city's present water system by an expert from Chicago shows the water in that system to be the purest found in the country.

Mr. RUBEY. Is not the supply that you get from that source inadequate?

Mr. McKESSON. No, sir. This system that we have is well protected, but we need about 1,100 acres more to fully protect this system. We are asking at the present time for a little land, about 1,200 acres, and we are asking for this land in the present bill. Our water system at the present time is inadequate. Almost every season we are compelled to cut down the supply of necessary water because we can not supply the present demand of our people for water. The necessity has been laid upon us to extend our water system. This can be done only by extending our system to the north slope of the peak. The snows melt early on the south slope of the peak and in the early part of the season we have an abundance of water, but as the season progresses the water supply becomes short, so we have to cut down the supply to our people. On the north side of the peak there is an amount of snow that equals that which falls on the south side of the peak. This snow melts later and the result is that when the snow has practically gone from the south slope the north slope is furnishing a good body of water. The city of Colorado Springs has bought land for the purpose of building reservoirs on the north side of the peak. It has bought lands for six reservoirs on this slope of the peak. These reservoirs are indicated at the points I am showing you there.

The city already owns this land and it is ready to develop the water on that portion of the slope. In order to develop that water and build reservoirs, the city will be compelled to expend a million and a half or two millions of dollars. Before expending that amount of money we want to know that we can keep that part of our water supply free from impurity and disease, so that you and others can

visit Pikes Peak without carrying away disease. We want all who visit us to find recreation and comfort, and not disease and death. We must have more water, and when we get it we want it as pure as the water is in our present system. In order to keep the water pure we must be able to protect these basins from which the water flows into our reservoirs that we are about to build. These lands are open at the present time so that cattle can stray upon them. The Forestry Department of the Government has been kind enough to refuse to allow grazing permits, but they can not prevent cattle from straying over these lands.

Gentlemen, I have known of cases where cattle have gone in there and become weakened by the winter and unable to get out of the streams where they were found dead. It was suggested by the Forestry Department that we might patrol this country. Gentlemen, that can not be done without having an army of men on this area to protect and keep out those cattle and the numerous people who visit this section. In this rough, broken country animals go up through these ravines and all in these timbers here [indicating], and it is impossible to find them. We would have to station men as close as fence posts around this section of the country to keep the cattle off these watersheds. We have found from experience that the lands must be fenced so that cattle can not get in and people can enter only through gates like going into a national park. These watersheds are open on all sides so that cattle and campers and miners and woodcutters, all of these, can go into here [indicating]. Many of these people who camp along the streams in this watershed do not seem to realize the fact that people down here in the valley have to drink the water from these streams, and they are so forgetful of their fellow men that they throw the germs of disease in these streams to be carried into the stomachs of their friends not far distant.

We are asking for these lands, which you see here are indicated by this red mark [indicating], that lie in the basins around our reservoirs. We are asking for the grant of these lands so that we can control them; we are asking a grant of these lands so that we may have jurisdiction over them, and I want to emphasize that proposition: So that we may have jurisdiction over them, so that we can punish trespassers. As long as the Government owns these lands the Forestry Department can not keep persons out of there. This department has no right to prevent a man from going on public land for a lawful purpose. You may have your rules and regulations, but unless you can enforce them you can not secure protection.

Mr. RAKER. Your idea, then, is that the rules and regulations of the Forestry Department are not strict enough and severe enough?

Mr. McKESON. No, sir; they are not strict enough and not severe enough. Now, in the discussion before Secretary Wilson and Mr. Potter the latter admitted these three propositions: First, that while they might be able under existing legislation to give these cities the right to fence these lands, there was no legislation at the present time that would enable them to prevent trespassing upon these lands, that any persons might enter upon those lands at the present time, and there was nothing that would prevent them from doing so; second, that he admitted there was nothing to prevent mining and prospect-

ing, and persons entering upon those premises for such purposes; third, that only revocable permits could be granted for the use of these lands by the municipalities.

MR. RAKER. Is it your contention, then, that there ought to be a statute passed, or rules and regulations, providing that miners going upon these lands should be prosecuted criminally for trespassing?

MR. MCKESSON. No, I think not. There ought to be nothing done criminally; no rule of that kind. But I think the prospectors should be kept out, because I think the health of the cities and citizens is of greater value than the mineral that might be found in a country which has been prospected from the time that men first went to the mountains.

Now, in relation to the mining proposition of which mention has been made. The lands we are asking for have been thoroughly prospected. You can not go any distance on these lands but what you will find prospect holes and tunnels from a few feet long to 800 feet long. This mountain being next to the valley it was the first prospected. The prospectors thought that as soon as they got to the mountains they had found the place where gold naturally lies and they have been working in this locality since men first went to the mountains to find gold. The fact remains, however, that in this locality, which is covered by the lands for which we are asking a grant, no mineral of value has ever been found. I think that no one can say that there has ever been shipped from this entire locality a single ton of profitable ore, but it is still being prospected, not by the men who understand prospecting, who understand what is necessary in order to find minerals, but it is being prospected by the tenderfeet who come to the West and like the old-timers believe that they can ply their vocation successfully wherever there is a high mountain. They are still plying their trade.

MR. VOLSTEAD. The digging habit?

MR. MCKESSON. Yes, sir. And you can understand what it means for a prospector to go and establish a camp on one of those streams from which we get our drinking water; they are not thoughtful of the health of the people in the valleys. We want to keep the campers, fishers, and others out, but we can not do it except by fencing those lands.

MR. RAKER. Are there any private lands there owned by individuals?

MR. MCKESSON. Yes, sir; they are indicated by the lines here [indicating], but of course we will have to buy out those lands. We want the title to this land, so that it will not be open to entry. The land must be withdrawn from entry, so that we can protect the city from the man who makes entries for the purpose of selling rights of way to the city. We want the title so that we may not be constantly meeting conditions of that kind.

There is one other point that I want to bring to your attention: The only character of permit that can be granted by the Forestry Department is a revocable permit.

MR. RAKER. Is not that a good one?

MR. MCKESSON. No, sir.

MR. RAKER. Why not?

MR. MCKESSON. My reason for thinking that is this: You do not know how long that permit will be good because you do not know

what the next administration is going to be; you do not know what their policy is going to be.

Mr. RAKER. Is it not to the interest of the Government that they should have a revocable permit?

Mr. McKESSON. I think so far as individuals are concerned that might be true, but we can not build cities on revocable permits, because we do not know what moment we may be shut out of a water supply.

Mr. RAKER. How much of water power is there in these places?

Mr. McKESSON. There is considerable. If we invest or expend, say, \$2,000,000 for fencing these lands and for building these reservoirs on a revocable permit, the next administration may have a Forestry Department that takes an entirely different view of things from that which granted us the right to use the lands, and we might lose all by a revocation of our permit. Now, can we be expected to build a water system on a territory over which we have control simply by a revocable permit?

Mr. RAKER. You think there is any difference between a city asking for that and a private individual?

Mr. McKESSON. Yes, sir; I think there is a vast difference in this. Cities are permanent institutions; Pikes Peak will be here when we are gone; the cities are there now and will be there permanently. Pikes Peak will never lose its interest.

Mr. RAKER. As a legal feature of it, what difference will it be as between a private individual or corporation developing a water supply and the public?

Mr. McKESSON. I would think that there would only be this difference: As things are developed for the interest of the public, they have a better standing than things developed for a private corporation.

The CHAIRMAN. If you bond a city for \$2,000,000, they would not want, and would not do so, to put that much money in an enterprise unless it is a permanent investment?

Mr. McKESSON. When the Secretary of Agriculture reported unfavorably on our bill before, he suggested that they would give us certain kinds of use permits. We found we could not develop the water system under such permits and our business men, who are interested in the welfare of our city, declared that we could not afford to develop this system under that character of permit and that the only thing was to ask for these lands in order to build this system and adequately protect it after it has been built and erected.

Mr. MONDELL. You were speaking about the adverse report of the Department of Agriculture on the former bill. As you recall the former bill, was it a grant of these lands to the three municipalities—Colorado Springs, Manitou, and another one that was purported to be a municipality, Cascade, which was disclosed at the hearing to be not a municipality at all—and furthermore, that at that time, as I understood the measure, it involved getting the land for practically nothing, I believe, and the Forestry Department reported that the timber on that land was worth \$45,000? The bill has been changed and as I understand it, this alleged municipality of Cascade has been omitted. Do you know what now is the attitude of the department referred to?

Mr. McKESSON. The attitude, as I gather from Secretary Wilson and Mr. Potter, is this: Mr. Potter stated very frankly to Secretary

Wilson that these municipalities needed the protection of their water systems asked for, but that it was evident to him that the present law was not adequate to grant the relief required, and that there must be a change of existing legislation which would enable the municipalities named to adequately protect the water supply. He stated the cities should have jurisdiction over the land to prevent trespassing; that the permits should not be revocable; and that the lands should be withdrawn from entry. Secretary Wilson realizing that the department could not grant us the relief asked for, asked Mr. Potter to formulate some general bill which would grant us and all other municipalities similarly situated the relief asked for, and urged upon Mr. Potter to cooperate with the Interior Department so that they might at the earliest date possible formulate some general legislation which would meet the necessity of cases like this one.

MR. MONDELL. Does the land now included in this bill correspond with the land included in the other bill?

MR. MCKESSON. Almost entirely. Here [indicating] is the land that we are asking for at the present time, this reddish line. This red line indicates the 9,000 acres asked for.

MR. MONDELL. What further land did the other measure include?

MR. MCKESSON. That other measure went farther over here [indicating]. We found that we had gone over into this watershed from which we draw no water.

MR. MONDELL. Where is the town of Cascade?

MR. MCKESSON. That is here [indicating].

MR. MONDELL. Where is that Cascade Creek which the testimony seemed to disclose had enough power to heat and light a whole community?

MR. MCKESSON. That is right in there [indicating].

MR. MONDELL. Over in these blue lines?

MR. MCKESSON. Manitou is asking for that.

MR. MONDELL. What is the name of this creek here [indicating]?

MR. MCKESSON. This is Fountain Creek here [indicating], and this is Cascade Creek.

MR. MONDELL. And the Cascade Creek flows into the Fountain Creek?

MR. MCKESSON. Yes, sir.

MR. MONDELL. So you do not seek to control the waters of the Cascade Creek which flow into the Fountain Creek from which you get your supply?

MR. MCKESSON. No, sir; we get our supply away above that.

MR. MONDELL. You get your supply from this Crystal Creek here?

MR. MCKESSON. In order that you may understand that, I will say that if we developed these lands here [indicating], this water system here, our water stored in this place here [indicating] is carried from here [indicating] to here [indicating]; it never gets into the Fountain Creek at all.

MR. MONDELL. What is the reason for excluding this strip through here [indicating]?

MR. MCKESSON. We have no reservoirs on this creek here [indicating] at the present time. This little creek supplies the town of Cascade. It is a town, but it never has been incorporated, and it is owned by private parties, although a great many people in the

summer time go in there and spend the summer. This water from this creek down here supplies the people with water down here.

The CHAIRMAN. That was in the former bill?

Mr. McKESSON. Yes, sir; because these people were asking for a grant of these lands. It ought not to be granted to them until they are incorporated as a municipality, and we cut them out this time, which I think is right.

Mr. RAKER. Manitou is down about here, is it not?

Mr. McKESSON. Yes, sir.

Mr. RAKER. This particular blue-line mark, is that the particular tract that you desire to be granted to Manitou?

Mr. McKESSON. Yes, sir.

Mr. RAKER. What creek is that [indicating]?

Mr. McKESSON. French Creek. The city of Colorado Springs is asking for a grant of land in here [indicating], as they expect to build two reservoirs in here [indicating], and Manitou is to build a reservoir in here [indicating].

Mr. RAKER. Suppose you get this land over on the north side that you have marked here for Colorado Springs, how are you going to get that into your system for the springs?

Mr. McKESSON. We will carry that across the mountains by pipe line over into this system over here [indicating]. The city will build two reservoirs, one on Catamount Creek and one on Crystal Creek. It will carry the water from these reservoirs at an altitude of about 9,000 feet around the base of the mountains into its present water system that flows down Ruxton Creek. The fall here would not be very great.

Mr. RAKER. What is the elevation of the present reservoirs?

Mr. McKESSON. The lowest 10,237 and the highest 12,000 feet.

Now, one word further in regard to Manitou. Manitou lies between the two systems to be developed by Colorado Springs. Its watershed consists of the French Creek and its branches. It desires to build a reservoir on the French Creek. It is asking for the lands which shed the waters into this stream. I call your attention to how this situation must seem to people who are on the grounds. Manitou is a city with a population of about 3,000 people, with a large summer population, on account of the iron springs and the mineral springs being at Manitou, and the fact that it lies at the base of Pike's Peak. The present bill provides that we shall purchase these lands on the stumpage basis, paying the Government the present stumpage value on these lands. This means that Manitou will have to pay \$25,000 or \$30,000 for the land asked for in this bill.

Mr. RAKER. That is because the Forest Service reported that bill two years ago, because you were trying to get \$45,000 worth of timber for nothing practically?

Mr. McKESSON. Yes, sir.

Mr. RAKER. And now you claim that you will buy all of that timber on the basis of the stumpage value?

Mr. McKESSON. Yes, sir.

Mr. PICKETT. There were some other gentlemen here representing some other interests; what are they?

Mr. McKESSON. The Empire Co.

Mr. PICKETT. They came to see me, but I did not go into the matter with them; but in view of the fact that they were going to hold hear-

ings, I thought it would be well to have Mr. McKesson explain the whole situation.

The CHAIRMAN. Why didn't the people come in here?

Mr. McKESSON. I do not know.

The CHAIRMAN. I saw Mr. Holland here this morning and he declined to come in here. I feel that he ought to come in here. These people I have kept a week.

Mr. McKESSON. I was going to ask Mr. Pickett whether he had learned from Mr. Holland this morning whether the Empire Co. was disposed to enter objections against the grant of these lands. There have been negotiations pending between the Colorado Springs and the Empire Co., which we thought had been consummated, which would amicably settle their differences, but they did not reach a conclusion. Yesterday the committee from Colorado Springs had a conference with the representatives of the Empire Co. While we were not able to reach an agreement, and perhaps never will be able to reach an agreement, it seemed as a result of that conference that there was a disposition upon the part of the Empire people to take what we thought was a fair view of the matter.

Mr. PICKETT. Who is Mr. Hall?

Mr. McKESSON. He represents the chamber of commerce.

Mr. PICKETT. He is on your side, then?

Mr. McKESSON. Yes, sir.

Mr. PICKETT. He came to see me a few weeks ago.

Mr. McKESSON. Let me explain our situation with reference to the Empire Co. A number of years ago, when we were building this water system, we had to run some tunnels—when I speak of "we" I mean Colorado Springs—

Mr. RAKER. Two companies?

Mr. McKESSON. Yes, sir.

Mr. RAKER. And opposed to you?

Mr. McKESSON. Yes, sir. They are practically one company, under the same management, but just simply two corporations under different names. Now, in order to carry this water down and get it into our reservoirs there had to be a tunnel run through the backbone of the peak about a mile long. The contractor took the contract to do that work for a certain amount. He encountered some difficulties which made it impossible for him to complete the contract without losing a great amount of money. The city faced the proposition of not getting its tunnel completed and made some kind of arrangement with him. That was in the year 1898. They granted to this man Jackson and his assigns a franchise for 25 years, giving them the right to take the power, and put up power plants for the purpose of taking the power from the water in the then water system of the city and any addition to that system during the life of the franchise. We are in this peculiar situation under that franchise: All the power that is developed by this water going down these slopes on Pikes Peak, or that we might develop between now and 1923, which is the period covered by this franchise, can be used by the owners of that franchise; they can put up their power plants at any point on our present system as now developed or as may be developed up to 1923. The city council started to annul this franchise, but the courts refused to do that. The citizens of Colorado Springs are bitterly opposed to this franchise.

Mr. RAKER. Then, Colorado Springs or the city has no right to use the power developed by any of its present systems?

Mr. McKESSON. No, sir; and that applies to the future up to 1923.

Mr. PICKETT. Have they ever done anything in the way of constructing a plant?

Mr. McKESSON. The light company is supplying the towns of Colorado Springs and Manitou with light. They have a power plant that generates from eighteen to forty thousand kilowatts.

Mr. PICKETT. Where do they get that from?

Mr. McKESSON. From this power plant.

Mr. PICKETT. At some creek?

Mr. McKESSON. Ruxton Creek. The water is carried down in pipes on the banks of Ruxton Creek to the top of Manitou Mountain, and from there it has a fall of about 1,000 feet.

Mr. PICKETT. Is their franchise a power franchise?

Mr. McKESSON. Their franchise is to extract this power from the city's water system. We are facing this other unfortunate condition, too. The concluding paragraph of the franchise says that the city will extend the franchise, if Jackson and his assigns wish it extended, on such terms and conditions as the then city council may see fit to grant. Now, there is the clause that fills our people with apprehension. We do not know just how the courts may interpret this provision. The light company has the power franchise until 1923, and how much longer they may have we do not know definitely.

Mr. RUBEY. This legislation that we are talking about will not affect that?

Mr. McKESSON. No, sir.

Mr. RAKER. If they develop this they have the same right on this as the present one?

Mr. McKESSON. Yes, sir; that is true. I want you to distinctly understand that they would have the same right on that.

Mr. RAKER. If they get the full power of the reservoir here [indicating] it would flow your town away, if the pipes bursted; from the lake down to the present point where the company puts its pipes in here [indicating], there would be a plenty of fall down there?

Mr. McKESSON. Yes, sir.

Mr. RAKER. With all of that power developed there already, the city could now put in a sufficient amount of pipes, that they could develop more power than the people are developing on the lower part of the stream?

Mr. McKESSON. No, sir.

Mr. RAKER. From the lake down to this point?

Mr. McKESSON. You would have to let the water in open cuts. You could not pipe that water down there. If we developed the power there, they would have the right to that power. They have the right to all the power on that system during the life of that franchise.

Mr. RAKER. You are, then, under their control?

Mr. McKESSON. Yes, sir; but they can not contaminate the water, though. The Empire Co. has holdings on the north side of the peak, and they located certain reservoirs over here to use this water on the north side of the slope for power purposes, and the city came in and bought the lands that the Empire Co. intended to use and got their reservoir sites. The Empire Water & Power Co. is wanting the city

to buy its holdings. The president of the Colorado Springs Light, Heat & Power Co. and the president of the Empire Water & Power Co. are the same, and a number of the directors in both companies are the same people. In our negotiations we reached this point: The city of Colorado Springs agreed to buy all the Empire Co. lands and water rights provided the light company would release these lands and the water rights from the operation of the Jackson franchise.

Mr. RAKER. Are you under any other agreement with these corporations, or either of them, that if you got permission from the Government to go up there and develop a new system that they would have you under the present contract?

Mr. McKESSON. I think there is no such agreement, but the Jackson franchise would give them the use of the power.

Mr. RAKER. Suppose you went to the department, and the reservoirs which you have there now are entirely new, and develop a system and got permission from the Government to use that water to supply your people with, is there a contract by which the city of Colorado Springs is bound up in advance, before they got any property at all, to turn right over to these two corporations?

Mr. McKESSON. Those who have examined the franchise believe that any water we develop or any power during the life of that franchise will go to them.

Mr. RAKER. So you have no system at all?

Mr. McKESSON. No, sir.

Mr. RAKER. You haven't any rights except these contracts——

Mr. McKESSON. Yes, sir.

Mr. RAKER. You haven't any right to develop any electricity, or——

Mr. McKESSON. Yes, sir.

Mr. RAKER. Or the springs for town purposes?

Mr. McKESSON. We have some rights there.

Mr. RAKER. Suppose you developed an entirely new system. I understand that you are still bound up in the future by contract that will prevent you from doing that and that these corporations will still have a right to use your property as you stated?

Mr. McKESSON. There is a possibility for our escape.

At this juncture the committee took a recess until 10.30 a. m. tomorrow, March 15, 1912.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Washington, March 15, 1912.

The committee met at 10.30 a. m., Hon. Edward T. Taylor (acting chairman) presiding.

STATEMENT OF HON. C. L. McKESSON, CITY ATTORNEY OF
COLORADO SPRINGS, COLO.—Continued.

Mr. McKESSON. I expect to take but very little of the time of the committee this morning. At the conclusion of the remarks which I made on yesterday, I was trying to inform you of the situation in

Colorado Springs with relation to certain utility corporations that have franchises or water rights on Pikes Peak. My reason for mentioning this matter is that when this bill was before the House and before this committee there was an extensive brief filed by the representatives of the Empire Co. protesting against the grant of these lands to Colorado Springs, stating as their reasons, which were set forth in their statement which was made at that time, that their rights would be greatly prejudiced if such a grant were made to these municipalities.

Mr. VOLSTEAD. What did they base that prejudice on?

Mr. McKESSON. They contended, briefly, that if this grant was made to Colorado Springs that it would cause a loss to them of certain water rights which they hold on the north slope of the peak.

Mr. RAKER. I would like to ask you, Mr. McKesson, whether or not there were any hearings taken in writing?

Mr. McKESSON. No, sir; it was just simply a brief filed by the Empire Co.

Mr. RAKER. And no hearing had?

Mr. McKESSON. No, sir.

The CHAIRMAN. I do not think it was reported, if there was any hearing.

Mr. RAKER. Have you got a copy of that brief?

Mr. McKESSON. We have a copy of both briefs that were filed at that time.

Mr. PICKETT. Was a copy filed with the committee?

Mr. McKESSON. Yes, sir. What I was going to say in regard to that matter was that negotiations have been pending for some time between the Empire Co. and the city of Colorado Springs looking to an adjustment of their differences, but no adjustment has been reached up to this date.

Mr. PICKETT. Have the negotiations been terminated or are they still pending?

Mr. McKESSON. They are still pending, but with very little chance of settling the matter; but a conference with the representatives of the Empire Co. day before yesterday led us to think that they do not feel it their duty at the present time to appear before this committee and oppose the grant of these lands. We invited them here yesterday, and we invited them here again to-day. I do not know why they do not come here. I do not know whether they will file anything here for the purpose of opposing these grants.

Mr. RAKER. Can they make use of their water rights to any advantage without making use of Government lands?

Mr. McKESSON. No, sir; they can not. Briefly, I will state the situation as it exists between Colorado Springs and these companies at the present time. The Empire Co. purchased certain surveys on the north side of the slope through a promoter, who said that he was going to develop power rights on that slope of the peak.

Mr. FERGUSON. Was this all inside of the forest reservation?

Mr. McKESSON. Yes, sir. The company started to buy certain lands for the purpose of locating reservoirs thereon. They refused to pay the price which the owner of the lands wanted and began condemnation proceedings. At the time the condemnation proceedings were begun the city of Colorado Springs took an option on these

lands, and they purchased them before the condemnation proceedings had gone any more than simply being filed in court. So the city acquired practically all the land in order to buy reservoirs. The Empire Co. still has 1,080 acres of land.

Mr. RAKER. The Empire people?

Mr. McKESSON. Yes, sir; and scattered in different parts of the district on the north side of the slope.

Mr. RAKER. Inside of the land that you are seeking to get?

Mr. McKESSON. Yes, sir; I think all of it.

Mr. RAKER. If you succeeded in getting this, it would be your idea in condemning other land that the company owns and have it go to the city?

Mr. McKESSON. Yes, sir.

Mr. RAKER. And the reservoir?

Mr. McKESSON. There is no reservoir built at the present time, and they are unable to build any reservoir by reason of the fact that the city or the Government owns the lands, and they can not condemn to build the reservoir. They can not condemn the city's lands.

Mr. RAKER. And the Government has not given them these rights?

Mr. McKESSON. They have been unable to get any permit to use the Government's lands and so they have been unable to develop any power on the peak.

Mr. RAKER. Had they spent any money on that branch of it?

Mr. McKESSON. Yes, sir. Last year they put in a little power plant which probably cost ten or twelve thousand dollars, and they utilize the flow of the stream for the purpose of furnishing lights to the little village of Green Mountain Falls. They have spent about ten or twelve thousand dollars in connection with that plant.

Mr. RAKER. They will have to deal with the city? Do they propose to enlarge that plant at that point?

Mr. McKESSON. They can not without flooding either the city or the Government lands.

Mr. RAKER. Is that what they aim to do?

Mr. McKESSON. That is what they would like to do. I think that is the reason why they are not opposing this bill to-day. They will be in no more position after the grant to the city than they are now.

Mr. RAKER. Suppose in making this grant we should put in some restriction under which some one might be authorized to fix the maximum price of power, would it be of any advantage to your people?

Mr. McKESSON. I think not. If you will bear with me I will give you briefly the matter of the negotiations, just where we stand at the present time. The Empire Co. told us very plainly that they had sufficient influence in Congress to prevent us from securing the grant of lands in this locality, and that unless we made terms with them any efforts that were put forth in this direction would be futile.

Mr. RAKER. Did they tell you where the influence lies?

Mr. McKESSON. No; they did not, except that they said to us that the Susquehanna Light & Power Co., one of the largest general holding companies in the East, was the owner of the Colorado Springs Light, Heat & Power Co., and the president of that company and the president of the Empire Co. were one and the same person; that we should realize the fact that through the influence of a company so large as that the matter might be stalled, and it could not be put through

except by the earnest cooperation of all parties and no opposition from any source.

Mr. RAKER. They did not tell you how they were going to use their influence?

Mr. McKESSON. No, sir; they did not.

Mr. RAKER. Or in what way or what particular method they were going to use?

Mr. McKESSON. No, sir; they did not.

Mr. RAKER. Did you take from their statement that their power was such that they could prevent this legislation?

Mr. McKESSON. We feel that if this company, connected as it is with large corporate interests, should use all its influence and power against us, it would be a hard matter for us to get any grant of lands.

Mr. RAKER. Your application is not made in the interest of these companies?

Mr. McKESSON. I hardly see how that could be. I know that no just claim of that kind can be made. I was in the House the other day, and I listened with a great deal of interest to statements made there about a small matter concerning the course of a department being in the interests of certain corporations against the Government's public policy.

Mr. RAKER. Is it not true that the city of Colorado Springs and the town of Manitou have at all times and have in this bill expressly waived any claim to any right whatever that the Empire people now have with regard to water rights or anything else and disclaimed any desire or intention of interfering with any of their vested rights?

Mr. McKESSON. Yes, sir.

The CHAIRMAN. And is not the position of the company, as expressly stated by Mr. Holland, not because of the city's willingness to recognize all rights then and not interfere with them, but that they do not want the city to get rights that will allow it to expand its irrigation system or waterworks system in the hope that they may get it themselves?

Mr. McKESSON. Yes, sir.

Mr. RAKER. But if this grant is made, will not these companies get the opportunity to develop this water power?

Mr. McKESSON. Not to develop; but if it was developed by the city during the life of the Jackson franchise—its franchise expires in 1923—they might have the right to use that water for that length of time.

Mr. RAKER. If you built the reservoirs that you speak of, would not the fact that you built them create a water power?

Mr. McKESSON. Water would be conducted from these reservoirs to Colorado Springs.

Mr. RAKER. You would have to throw the water back over some of this Government land and letting it out from your other town, which would have given a fall that would be utilized for water power, wouldn't they, under the ordinance or the franchise that you have referred to, have a right to make use of that water in creating electric energy?

Mr. McKESSON. We would dispute that proposition with them, but the chances are that they would be able to utilize that power during the life of the franchise. Mr. Raker suggested a matter that I was

thinking about a few moments ago, and that is whether the development of a system so far distant——

Mr. RAKER. Supposing that the committee report favorably upon this bill and the bill should be passed, could not a provision be placed in the bill binding the city of Colorado Springs so that they could not allow these people to exercise any right of control under any agreement that they have had heretofore?

Mr. McKESSON. I would not be able to say a provision of that kind could be made without rendering the grant void.

Mr. RAKER. A new right and a new interest, wouldn't Congress have the power to say that they should not contract it away, any water power generated by this grant, and would not that of itself prevent the consummation of any attempted arrangement that they had made before on something that Colorado Springs never had?

Mr. McKESSON. They might be able to accomplish it along that line.

Mr. RAKER. As I understand you, the courts have already decided that this franchise is a contract right?

Mr. McKESSON. Yes, sir.

Mr. RAKER. Wouldn't this question be answered by stating, in so far as Congress is concerned, that it would not be an act infringing the obligation of contracts?

Mr. McKESSON. That is what I had in mind.

Mr. PICKETT. Have you any statute in Colorado giving the municipalities the right to fix the prices of these public-service corporations?

Mr. McKESSON. No; we have no statutes on that subject.

Mr. VOLSTEAD. I presume that we could put into this grant a provision that it should be void provided it was subject to the provisions of this franchise.

The CHAIRMAN. I think we can attach such condition to the grant as we saw fit, and if they do not like it they need not take it. The Empire Co. has spent a whole lot of money—more than their plant is worth—and the city of Colorado Springs is willing to pay them all that their plant is worth to-day, and what a board of arbitration will set as their value this municipality will pay. The company is not willing to do that, and they want to prevent the city from acquiring rights to prevent their enlargement or development hereafter.

Mr. VOLSTEAD. Why can't the city condemn that plant? They have the——

The CHAIRMAN. There is a forest reservation there.

Mr. VOLSTEAD. I mean the company's plant, not the reservation.

Mr. McKESSON. The city of Colorado Springs and the Empire Co. began negotiations which terminated in what was termed an arbitration agreement, which was satisfactory to the city of Colorado Springs and to the local representatives of the Empire Co. and the local representatives of the Colorado Springs Light, Heat & Power Co. I have with me a copy of that arbitration agreement which was thus formulated and which the city council of the city of Colorado Springs authorized the mayor and clerk to sign on behalf of the city of Colorado Springs.

Mr. VOLSTEAD. Does that contain the franchise that you speak of?

Mr. McKESSON. Just a moment, if you will permit. The parties to this arbitration agreement were the city of Colorado Springs, the Empire Water & Power Co., and the Colorado Springs Light, Heat &

Power Co., which is the present holder and owner of the Jackson franchise. The city of Colorado Springs agreed to buy the holdings of the Empire Co., both its lands and its water rights, at such price as might be fixed by a board of arbitration appointed by the city of Colorado Springs and by the Colorado Springs Heat, Light & Power Co., and by the Empire Water & Power Co., on the award made by such arbitration board provided for; and here is where the trouble came. The fourth section of that agreement reads as follows:

In the event of the purchase by the city, whether under said agreement to purchase or said option—

This agreement was conditioned upon the city of Colorado Springs securing a grant of the lands asked for in this bill and that it would buy the holdings of the Empire Co., but if this grant was not made the option to purchase should be binding on the city—

the light company shall, as an incident thereto and as a part thereof, and for the consideration aforesaid—

Which was a nominal consideration of \$1—

moving to the company, forthwith effectually release and forever surrender and abandon to the city all rights heretofore granted or which may be claimed to have been granted by said Jackson franchise to said George W. Jackson, or his assigns, in respect of all or any part of the water or watershed of the Fountain Creek above the confluence therewith of Ruxton Creek, and to that end shall duly execute and deliver such instrument of writing as in the opinion of counsel for the parties hereto shall be effectual to that end, before any part of said consideration or purchase price shall be paid or payable by the city to the company: *Provided, always:* (a) That such release, surrender, and abandonment shall not abridge, curtail, or in any manner affect any other right, privilege, or easement granted by said Jackson franchise; (b) that such release, surrender, and abandonment shall not apply to water developed on the said north slope by the city or by any person, firm, or corporation for it and made tributary to the city's water system on the south slope at a point above the high-pressure line as now installed, which terminates at or near the upper station of the Manitou Incline Railway Co. on Mount Manitou; (c) that the city will not grant to any person, firm, or corporation the right to utilize, during the life of said Jackson franchise, any water developed from the watershed of Fountain Creek above the confluence therewith of Ruxton Creek, not made tributary to the south slope system as provided in the foregoing subdivision b, for the generation of electric energy.

By the terms of that agreement the Jackson franchise would have been removed from all these lands which we are asking for at the present time.

The CHAIRMAN. Wouldn't that be affected under the present system on the south slope?

Mr. McKESSON. It would not affect the Jackson franchise on the south slope, but would prevent the Jackson franchise operating on the developments made on the north slope.

Mr. VOLSTEAD. That is, as to the right to generate power?

Mr. McKESSON. Yes, sir. As I started to say, this draft of agreement was made after much negotiation and the city authorized its being signed. It was sent to New York for approval, and we were informed that they would not approve the agreement, that the Empire Co., was ready to sign the agreement, but that we must strike out of this agreement all of that which related to the operation of the Jackson franchise. The light company absolutely refused to enter into this agreement.

Mr. RAKER. In other words, that agreement was never executed?

Mr. McKESSON. It was never executed. The Empire Co. then said to us: "Can you buy these lands of ours and these water rights at the

price that may be agreed upon by the board of arbitration," but we said "No, for if we buy these lands and water rights of yours, the light company can use them for nothing under this Jackson franchise, and we think we ought not to buy from one company for the benefit of another company, who have practically the same officers."

Mr. RAKER. Are the stockholders the same?

Mr. McKESSON. I understand the stockholders are not the same, but the officers of the two companies are the same. Mr. Bullock is the president of the Empire Co., and he owns all but four shares of the Empire stock.

Mr. PICKETT. Do I understand it that unless Congress or the Government grants some concession either to the Empire Co. or to the city, neither one of them can utilize this water? Is that the idea?

Mr. McKESSON. No, sir; that is partially true, but not quite the condition that exists there. The Empire Co. can not develop any of its present holdings there unless it can get from the Government or from the Forestry Department of the Government the right to lay water mains on public lands.

The CHAIRMAN. The Government has not granted that right?

Mr. McKESSON. No, sir.

The CHAIRMAN. And the Government does not propose to grant those rights unless they propose to get a royalty on the system?

Mr. McKESSON. Yes, sir. I am speaking of the Empire Co., the one that owns the rights. The light company is using the power now developed upon the present water system of the city for the purpose of lighting the town of Manitou, Colorado City, and Colorado Springs, furnishing heat, light, and power for those three municipalities.

Mr. MONDELL. Don't their business come under the act of 1905, granting rights of way, water rights, for municipal purposes?

Mr. McKESSON. No, sir; it is not a municipal plant.

Mr. MONDELL. I know it is not a municipal plant, but do you hold that that law only applies to applications by municipalities?

Mr. McKESSON. I do not know whether it does or not. Secretary Wilson asked them whether they were able to get a permit to flood the Government lands, and they said they were unable to get any permits.

Mr. MONDELL. The act of 1905 very clearly grants rights of way for municipal purposes.

Mr. McKESSON. I suppose they claim that they want to develop power on this north slope for municipal purposes, although it is not being used for any such purposes at the present time.

Mr. RAKER. If the company developed its system and took the power to the city, wouldn't it be for municipal purposes?

Mr. McKESSON. Yes, sir.

Mr. RAKER. And that would make it come directly under that act?

Mr. McKESSON. Except in so far as it applies to the reduction mills and the power plants in the locality, but it would be practically all for municipal purposes.

Mr. MONDELL. That act also authorizes the right of way for mining purposes and the reduction of ore.

The CHAIRMAN. The Empire Co. at the present time is at a standstill.

Mr. McKESSON. It has been at a standstill for some time, and it is trying to unload this property on the city, for it feels that its hands are so tied it can not do anything. They are unable to condemn

our lands and we can condemn what land they have and take it for municipal purposes; so they realize the fact that it is utterly impossible for them to make any development on the north slope of the peak, and it is a question with them now how they can get rid of their holdings.

Mr. MONDELL. Before you conclude I should like to have you give the committee your views as to the probability of your being able to protect your watershed if we had general legislation which would authorize the Secretary of Agriculture to make leases for fixed periods, of considerable length, to municipalities of lands upon the watersheds of the city, which leases would give the city complete control and prevent the location of mining and the establishment of other land claims within the boundaries of such an area, such leases to be on a nominal rental.

Mr. McKESSON. I will be glad to do that, but I desire to finish what I have to say on the Empire situation.

Mr. MONDELL. I simply make that suggestion at this time that before you conclude you might give your views as to whether that sort of plan, or something of that kind, might not be an alternative if Congress did not see its way clear to make grants to municipalities.

Mr. McKESSON. I will be greatly pleased to do that.

In our conference with the Empire Co., day before yesterday, we said to them frankly, "We, representing the city of Colorado Springs, can not and will not enter into an agreement to purchase the holdings of the Empire Co., except in pursuance of the provisions of this contract, that those lands and water rights, before being purchased by us, shall be released from the Jackson franchise." The light company's representatives who were here refused to release any right of the Jackson franchise. They then declared that they would oppose this bill. We said to them, "Why do you want to oppose this bill? If this grant of lands is made by Congress to Colorado Springs you will be no worse off than you are at the present time. You are at the present time unable to get any grant from Congress or from the forestry department of the Government to flood the Government lands or to lay your pipe lines. You absolutely can make no terms at the present time for the purpose of utilizing any of the power or any of the rights which you claim up there. You certainly would not be in worse condition if this grant of lands was made to Colorado Springs. Then, why do you wish to come in and defeat Colorado Springs in securing that which you realize, as citizens of that locality, it absolutely needs," and they said they would think the matter over, and they have not yet been here before this committee. Before, they had appeared before the Secretary of the Interior and also before the Secretary of Agriculture, and that was before the representatives of the company had come over from the East. I do not know whether they will appear before this committee or not.

Mr. RAKER. Why do you say that they could not get the right from the Government to build a reservoir and build ditches for the purpose of establishing a plant for municipal purposes?

Mr. McKESSON. I say that for this reason: It must be apparent to the forestry department of the Government and to anyone informed of the conditions existing there that whatever water is developed on the north slope of the peak must be used by the municipalities in the valley for domestic purposes, and the power company must turn

that water, after it has extracted the power from it, to the municipalities for their use, because the municipalities are so located that they must have this water. Now, I believe that no one representing the Government will grant to a power company the right to take the water which is needed by municipalities and divert it for power purposes; in other words, they will not permit them to use the Government lands to divert water from the municipalities.

Mr. RAKER. You did not get the purport of my question. My question went to this point: You stated that they could not get the right from the Government to build reservoirs and ditches over the Government land for the purpose of furnishing electric power to municipalities, as well as furnishing the same water for use in generating the electric power to the municipality; in other words, the development of the reservoirs or the building of ditches for both purposes, namely, first, generating power for the municipalities, and second, furnishing water for the municipality, if their application is solely for that purpose. This is solely now for information.

Mr. McKESSON. I know of no reason why they might not be able to obtain such a grant.

Mr. RAKER. Have they made any such application?

Mr. McKESSON. I do not know what they have done along that line, except as stated by the attorney for the company to Secretary Wilson, that it had been unable to get any permit to flood the Government lands.

Mr. VOLSTEAD. I believe they might be able to get a permit, such as the one that they offered——

Mr. RAKER. I was asking for information to see what they were doing.

Mr. McKESSON. I do not know what they have done.

Mr. RAKER. Have you a copy of this Jackson franchise?

Mr. McKESSON. I believe I have not with me, but I will be glad to furnish it.

Mr. RAKER. Will you present it to the stenographer so that it can go into the record, and also this agreement that was made and finally not executed?

Mr. McKESSON. Yes, sir.

Mr. RAKER. Have you any other agreements entered into by the city with either of these companies except these two—the franchise which was consummated and this which was not consummated?

Mr. McKESSON. No, sir.

Mr. RAKER. And no other agreements entered on the records of the municipality or any written agreement by either of the companies?

Mr. McKESSON. Let me state this fact: The Colorado Springs Light, Heat & Power Co. has a franchise from the city of Colorado Springs to use the streets and alleys for lighting purposes.

Mr. RAKER. That is, in addition to the Jackson franchise?

Mr. McKESSON. Yes, sir.

Mr. RAKER. Have you a copy of that?

Mr. McKESSON. No, sir.

Mr. RAKER. Can you furnish a copy so that it may go into the record?

Mr. McKESSON. Yes, sir.

Mr. MONDELL. Would the use of this water by the power company for the generation of the electric energy reduce its volume, change its character, or render it less available for use for municipal purposes?

Mr. McKESSON. That would depend upon where they turned the water after they had taken the power out of it. If the water was carried into the present city system on the top of Mount Manitou the water can be used by the power company and the power extracted and the water turned into the city's present system without any loss whatever to the city.

Mr. FERGUSON. As I understand it, the Government author ties have not yet sanctioned this bill before the committee?

Mr. McKESSON. No, sir.

Mr. FERGUSON. I would like to ask you this: As I understand it, you want this water to increase the supply for municipal purposes and to keep it pure for municipal purposes only?

Mr. McKESSON. Yes, sir.

Mr. FERGUSON. Wouldn't it serve your purpose, therefore, to give you some grant showing an absolute fee-simple title to the lands you ask for in this bill?

Mr. McKESSON. In reply, I would say that any reservation in the lands made to the city that would leave this land open to mineral or other entry would be prejudicial to the purity of our water system.

Mr. FERGUSON. Would it not be in the power of the Government authorities to regulate that by law, or otherwise, to protect the land that you ask for and the purity of the water, consistently with reserving to the Government any mining rights that might hereafter be developed on this land?

Mr. McKESSON. I think not.

Mr. FERGUSON. Why not?

Mr. McKESSON. For this reason: If these lands are granted to the city they must be permanently controlled by the city. Now, if the lands are open to entry, any one who desires to go upon them for that purpose may do it. They can establish on those lands such buildings and equipments as they feel necessary for the development of their properties.

The CHAIRMAN. Their going in on those lands prospecting would interfere with the purity of the water of the system, would it not?

Mr. McKESSON. Yes, sir; that is the proposition exactly. They can not prevent persons from going on there for prospecting.

Mr. FERGUSON. You ask in this bill for a pure fee-simple title to this property?

Mr. McKESSON. Subject only to reversion to the Government in case the development mentioned is not carried out.

Mr. RAKER. How about the prospecting on this land?

Mr. McKESSON. Let me call your attention to this: There will be no prospecting on this land, as these lands which we are asking for have been thoroughly prospected.

Mr. FERGUSON. That does not count with me, because the Cripple Creek country has been prospected for many years and thrown aside as worthless?

Mr. McKESSON. Cripple Creek lays way over to the western——

Mr. FERGUSON. I understand that, but it is the question of the advisability of giving to the municipality such mining rights, if it

shall be possible to properly protect those cities by giving an ample and pure supply of water, but I am not yet satisfied in my mind that it will not be possible by regulation to preserve any possible right and still preserve the rights and interests of those cities.

MR. MONDELL. The law allows now the location of mining claims and also homestead claims, authorizing the Secretary of Agriculture—in fact, makes it his duty—to designate lands for homestead use. Therefore, unless there was some act or law to the contrary, the Secretary of Agriculture would have no authority under any agreement that he might make to in any way lessen or reduce or affect the right of individuals to enter upon these lands for the purpose of mining or prospecting or selection of agricultural lands.

MR. FERGUSSON. I admit that, but might not additional power given by Congress—

MR. MONDELL. As I said a moment ago, that might be an alternative, providing Congress did not see its way clear to make a grant.

MR. MCKESSON. Just one statement further in regard to the utility companies about which we have been speaking. There is one provision in the Jackson franchise which the city is seeking to take advantage of that looks favorable to the city of Colorado Springs, and that is a provision that the holders of the Jackson franchise will furnish the city power at the price paid by its most-favored consumer. Its franchise was first operated by the Hydro-Electric Co. The name is familiar to some of you gentlemen. While that company owned the franchise it made a contract with the light company of Colorado Springs to furnish them power at a half a cent per kilowatt per hour. The city immediately came in and demanded power for a municipal plant at the price at which this power was being furnished to the light plant. The Hydro Co. refused to sell power to the city at this price and a suit was entered which was tried in our district court and there decided in favor of the Hydro Co.

MR. VOLSTEAD. On what grounds?

MR. MCKESSON. The Jackson franchise had a provision in it which read something like this:

That the said George W. Jackson and his assigns shall, after 90 days' notice, furnish the city such power as it may require for municipal purposes at the price paid by its most-favored consumer.

The court held that the words "municipal purposes" were restricted to such power as the city might require for its elevators, of which it had none, for its telephone and telegraph lines, of which it had none; and other similar purposes.

MR. RAKER. Has that case been taken to the Supreme Court?

MR. MCKESSON. Yes, sir; but it has not been decided yet. I have gone into the matter thoroughly, and it seems to me we must get a decision favorable to the city of Colorado Springs in that case. If that case is decided favorably to us, we have a chance to build a municipal plant. Now, in regard to these power companies. If they come before you and make representations which seem to indicate that we are not trying to do the fair thing with them, ask them simply this question, whether the mayor and the other representatives of the city did not say to them: "We do not desire to take from you one single legal right that you have or a single foot of property that you have. If there is anything in this bill which will do that,

we want it stricken out, for we want to pay for everything that we get from you, but we do not intend to have you hold us up."

Mr. RAKER. Who is present in Washington representing these companies? Give their names, so that they may go into the record.

Mr. McKESSON. Mr. R. L. Holland. He is stopping at the Willard Hotel. He is attorney for the light company and also for the power company; a director in one company and secretary and treasurer in the other company. Mr. J. S. Dill, of New York, vice president of the light company, was here yesterday. He left yesterday evening. Mr. George Tripp.

Mr. AVERY. There was Mr. R. L. Holland, attorney at law, Colorado Springs, Colo., stopping at the New Willard Hotel; he is attorney for the Colorado Springs Light, Heat & Power Co. and director, and is also attorney and secretary and treasurer of the Empire Water & Power Co. Mr. J. S. Dill, who is vice president of the Colorado Springs Light, Heat & Power Co. and vice president of the Empire Co. He lives at 40 Wall Street, New York. Mr. George B. Tripp, of Harrisburg, Pa., the local manager of the Harrisburg Electric Co. He has been the manager for 10 years for the electric company in Colorado Springs on the 1st day of October, 1911. He has our light contract.

Mr. RAKER. These men were in the city yesterday?

Mr. AVERY. Yes, sir.

Mr. RAKER. And you gentlemen conversed with them?

Mr. AVERY. Yes, sir.

Mr. RAKER. I want to know whether or not this committee has power to issue a subpoena for witnesses upon a matter before it.

The CHAIRMAN. I do not know that we have. Mr. Mondell, is it your understanding that the committee has power to subpoena witnesses on a matter that is pending? I invited Mr. Holland myself.

Mr. MONDELL. It would be a good thing to invite him by letter.

Mr. RAKER. And have it delivered personally by a messenger.

Mr. MONDELL. The messenger of the committee can deliver it to him.

The CHAIRMAN. When will the committee say that we will invite him to come; when shall we have another meeting?

Mr. MONDELL. Whenever you fix it.

The CHAIRMAN. I want to say to the committee generally, there is no other conceivable source from which a supply of pure water can be had for the city of Colorado Springs and the city or town of Manitou; the city of Colorado City, which is a city of 6,000 people, gets its water supply from Colorado Springs and can not get any pure water from any other source; they have simply got to get it right there. The population in those places will increase to more than a hundred thousand people in a few years, and they can by no possibility get water from any other source.

Mr. VOLSTEAD. Has there ever been any examination of any other sources of supply?

Mr. McKESSON. Yes, sir; and there is no other way to get it. You can not have wells in that country.

Mr. MONDELL. I would suggest to the chairman to fix a date and advise these people that the committee has this matter under consideration and would be glad to hear them in regard to the matter

at a given date or any other date which they might fix within a week or 10 days.

The CHAIRMAN. These people who have been objecting to this bill are here in the city and in this building now, or some of them were here, and the committee is ready to hear them, and the Colorado Springs people should not be compelled to stay here indefinitely to wait the convenience of the Empire people.

Mr. McKESSON. I spoke to Mr. Holland yesterday, and I asked him to come up, but he is not here to-day, I see.

Mr. RAKER. Have these men or any one of them been up to the committee room in regard to the matter?

The CHAIRMAN. Oh, yes; they have talked to the clerk of this committee and they know all about it.

Mr. RAKER. I want to know if they have been before the committee and made any request or suggestion that they have a hearing upon this matter themselves?

The CHAIRMAN. I think you had better ask the clerk.

Mr. WILLIAMS. Mr. Holland, and some other gentleman was with him; I suppose it was Mr. Dill. He said he would like to have a hearing on the matter. I told him it was the policy of the committee to let any person be heard; that I would confer with the acting chairman, Mr. Graham, and he said he would not only give them an opportunity to be heard, but that they must be heard.

Mr. RAKER. Did they say when they wanted to be heard?

Mr. WILLIAMS. They said they did not want to be heard until next week.

Mr. RAKER. Did they give any reason why they were not here?

Mr. WILLIAMS. They said they did not know that this hearing was coming off until next week. I told him that we had regular meetings on Wednesdays.

Mr. RAKER. Did they say anything about these other people being here and they would have to go home shortly?

Mr. WILLIAMS. No, sir; they did not.

The CHAIRMAN. Mr. Pickett spoke to me about this matter about 10 days ago and said that Mr. Holland wanted to be heard before the committee. I said he could have a full hearing and we would get the two parties before the committee at the same time. Mr. Pickett telegraphed him to come and he came here for that purpose. I saw him in my office and asked him to come up here.

Mr. RAKER. You mean Mr. Holland?

The CHAIRMAN. Yes, sir.

Mr. RAKER. As far as I am concerned, we will have a hearing for all of them.

Mr. AVERY. They filed a 35-page brief here, and I want to say that the statements in that brief are not true. I want them to come right up in here on this carpet and tell the truth. We would not want to hang around and not come and face you.

The CHAIRMAN. They filed this 35-page brief against this bill after those gentlemen had been here and gone home. The city has got to have these lands. The city can not advantageously issue its water bonds without them; they know what their water and legal rights are. But they do not feel justified in going ahead and making an enormous expenditure without having additional rights over the sources of their water supply and authority to prevent their reservoirs from pollution.

Mr. AVERY. I want to talk on the operation of the system. I want to tell you why we have got to have more reservoirs, as to what we consume, and what we have on hand. I will talk to you about the operation of the system and what they have got to do.

Mr. McKESSON. In the matter of the representatives of the Empire Co. I want to say that Mr. Holland was here on Monday and went with us to a hearing which was had before the Interior Department. He was with us on Tuesday and we had a hearing before Secretary Wilson of the Agricultural Department. They have been informed of this hearing and we invited him to be here. That was this week. He made some adverse statements both to Secretary Wilson and to Mr. Adams at those hearings. At that time Mr. Dill and Mr. Tripp had not come to the city. After his conference with them he has not appeared here. Now, what it means, I do not know.

Mr. RAKER. What was the nature of the conference before Secretary Wilson—the purpose of it?

Mr. McKESSON. The purpose of it was to secure a recommendation favorable to this bill.

Mr. RAKER. It was the same purpose in appearing before the Secretary of the Interior?

Mr. McKESSON. Yes, sir.

The CHAIRMAN. Neither one of those departments have reported on it, yet, Mr. Raker.

Mr. McKESSON. I would like to state the things which must be in general land bill if one is granted, which would grant relief to municipalities situated such as ours is: First, the lands in the watersheds must be fenced; second, they must be policed from the inside; third, the municipalities should have such jurisdiction over the lands in their watersheds as will enable them to arrest trespassers found therein when necessary; fourth, municipalities should have a stable, continuous control over the lands embraced within their watersheds; fifth, they should have a perpetual right to build in these watersheds such reservoirs, pipe lines, and other means for conducting water as they shall find necessary; sixth, the lands in these watersheds should be withdrawn from entry, either mineral or otherwise; seventh, adequate provision should be made for the protection of the timber within these watersheds, so that the existing timber may be protected, and the districts may, when necessary, be reforested. Now, if a general land bill can be passed which will enable cities to secure these seven propositions, we would have much better protection with that general land bill than we would have by a special grant of these lands to us. At the present time there is no way whatever of doing the things which would be required to be done without having a grant of the lands to us, giving us absolute control over them.

Mr. VOLSTEAD. Wouldn't it be possible to make that grant on the part of the Government with a reservation or limitation that all the power developed upon the land or in connection with it should be used in these three places, three towns, and that the price charged for their use should be regulated or determined either by the city council or the Secretary of Agriculture, or both jointly, or some other body, to be fixed upon in the bill? Now, I must confess that I am not very enthusiastic over the proposition of deeding to the city, property, when in connection with that we practically give to these power companies free use of these lands for power purposes and then on top of

that have the city go to work and put in the dams to get them. That is, I anticipate, what is contemplated, because when you build large reservoirs those reservoirs are used for dams.

The CHAIRMAN. In other words, you want to be sure that the city will get the benefit of the grant instead of the private corporation?

Mr. VOLSTEAD. Yes, sir. The old water power that is held under the Jackson franchise would not be interfered with, but we are creating a new power, or authorizing, rather, the building of a new power, and we have got to convey, or at least give the right to use Government property. Now, I do not feel very enthusiastic toward the proposition to give that for the benefit of these corporations, because I do not see what they have done to entitle them to this, and if we grant it we ought to grant it so as to give a substantial advantage to those cities.

Mr. McKESSON. Your purpose in that matter is certainly laudable and one which the citizens of Colorado Springs will greatly appreciate. But the situation is this: The Jackson franchise expires in 1923, with a clause, as I stated, which means a lawsuit, which says the city will extend. We have the initiative, referendum, and recall. No franchise can be granted without the vote of the people. No franchise can be granted unless it is favorable to the citizens of Colorado Springs.

Mr. VOLSTEAD. In case you refused to grant them terms and conditions that were reasonable, and they were able to maintain that they had a right, that you had violated your contract, the courts would most naturally hold in a condition of that kind, if it is valid at all, that they are entitled to a reasonable franchise, even though, as they might contend, that they had a right to maintain that franchise for all time upon conditions that are reasonable.

Mr. McKESSON. That contract provides that it may be granted for such time and upon such conditions as the then city council may determine, so that the time limit has been absolutely mentioned in that franchise.

Mr. VOLSTEAD. I must confess that I am a little afraid of it. The Supreme Court of Wisconsin has held that a provision for repealing a franchise to build a dam across a river can not be repealed. They undertook to cancel a very large number of franchises of that class granted to various parties and corporations in that State, with a view to imposing different terms upon them for the future, and the supreme court held that they had a property right there and they could not take it away. Unless I were satisfied that when we grant this thing we are not granting it for the benefit of these electric light and power companies, I would be very much opposed to any grant at all.

Mr. McKESSON. I will grant that these lands will not affect the right of the power company in any particular, either favorable or otherwise. So far as the light company is concerned, that holds the franchise. If their franchise can be extended, it can be extended whether you grant it this land or not. Here is the proposition: We must have this water; we must have it whether it comes under the Jackson franchise or not; but we must have it. We are asking for a grant of this land in order to keep the city water pure. We are asking for the land to fence it, and control it, and keep the water pure. We are buying it for that purpose.

Mr. VOLSTEAD. As long as the National Government owns this land the power company will probably have considerable difficulty

in getting any kind of a right to cross it, or to use it, unless they meet the conditions I am suggesting. If we make this grant in the form that you have got it, we take this land out of the ordinary rules, or the rules of the department, which impose these restrictions upon the power company, and grant it to the city; and the city having contracted away those rights, we practically give it to the power companies. While we would put this provision in, that the Agricultural Department now insists upon, with reference to all its lands inside the reservation, for the purpose of protecting the public against exorbitant charges, we will, I think, in a measure relieve the city from its responsibility under the Jackson franchise and secure to the citizens cheaper water at the same time that we grant this land, so that you can protect your water supply.

Mr. McKESSON. If anything can be done along that line, we will welcome it most heartily; but I am unable to see at present how we can reach that end. All we want is the grant of the lands in such form that we can protect the water system as it is now and must be developed to give us an adequate supply of water.

Mr. VOLSTEAD. I think we can do it under our absolute right to control our own property to suit ourselves, though it may be that the condition we put in is in the nature of a police regulation to protect your citizens. Still the courts have held that you might practically add as a condition to a title a condition that is practically a police requirement. They hold, for instance, this: That you can sell a piece of property, an individual can, and provide that a man can not put a saloon upon that property. They hold that that is a valid proposition. While I have not got very much sympathy with the idea that we must undertake to protect citizens in a State in the sale of our Government lands, because, it seems to me, that is a matter that ought to be taken care of by the States under their police powers, still here is a situation where apparently a municipality has bartered away its police powers. Now, we propose to sell this land, or donate it, to the city, and I am very much impressed with the idea that we ought to try to help that community. As to this new investment, they ought to get the full benefit of this water power, which they have got to develop in securing their water supply, and if we can use our proprietary rights as owners of that land for the purpose of giving them this cheaper water I think we ought to do this.

Mr. McKESSON. That meets with hearty approval from us.

The CHAIRMAN. Mr. Volstead does not feel like giving that private company a cinch upon the city in regard to these additional rights.

Mr. AVERY. Our municipalities have certain police powers, and if anything goes wrong the board of health or the city physician has the power to correct it. The power given the city under the health law is almost unlimited.

Mr. VOLSTEAD. This is purely for the purpose of protecting your health.

Mr. AVERY. It is also for the purpose of securing our health at a reasonable rate.

The committee thereupon adjourned to Monday, March 18, 1912, at 10.30 a. m.

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